

1617-00007 Pac. States Steel  
31356

90-21

1 Geoffrey Kors  
Robert Ogilvie  
2 Assistant Regional Counsel  
United States Environmental Protection Agency  
3 1235 Mission Street  
San Francisco, California 94103  
4 (415) 556-6001

5  
6 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

7 In the matter of: )  
8 )  
Pacific States Steel Corporation )  
9 Union City, California )  
Respondent. )  
10 )  
11 Proceeding Under Section 122(h)(1) )  
of the Comprehensive Environmental )  
12 Response, Compensation and Liability )  
Act of 1980 (42 U.S.C. §9622(h)(1)) )  
13 as amended by the Superfund )  
Amendments and Reauthorization )  
14 Act of 1986 )  
15 \_\_\_\_\_ )

Docket No. 90-21

16 ADMINISTRATIVE CONSENT ORDER

17 I. Statement of Jurisdiction and Purpose

18 A. This Administrative Consent Order ("Consent Order") is  
19 made and entered into by and between the Environmental Protection  
20 Agency ("EPA") and Pacific States Steel Corporation ("PSSC") by  
21 and through Stephen J. Russell ("Russell" and any successor ap-  
22 pointed by the Court herein are sometimes called the "Special  
23 Master") acting on behalf of PSSC in his capacity as Special  
24 Master to the United States District Court for the Northern Dis-  
25 trict of California (the "Court"). The purpose of this Consent  
26 Order is to provide reimbursement to EPA for response costs which  
27 will be incurred at or in connection with a removal action of  
28

1 certain hazardous materials located at 35863 Mission Blvd. in  
2 Union City, California (the "Site").

3 B. Russell has been appointed Special Master to act as an  
4 Officer of the Court and in such capacity to take control of the  
5 property and affairs of PSSC for the purpose of reorganizing PSSC  
6 to provide for the orderly retirement of just claims, liens, en-  
7 cumbrances and contractual obligations of PSSC as set forth in  
8 orders issued by the Court in the matters of Alberto Terones, et  
9 al., v. Pacific States Steel Corporation, numbered 79-2172 MHP,  
10 and Eldon T. Cordoza, et al., v. Pacific States Steel Corpora-  
11 tion, et al., numbered C-82-4209 MHP.

12 C. The Court has approved "The Reorganization Plan of  
13 Pacific States Steel Corporation in Conjunction with the City of  
14 Union City and the Union City Redevelopment Agency" dated June  
15 23, 1988 (the "Reorganization Plan") and the "Supplement to the  
16 Reorganization Plan of Pacific States Steel Corporation in Con-  
17 junction with the City of Union City and the Union City  
18 Redevelopment Agency" (the "Supplement") dated October 28, 1988.  
19 The Reorganization Plan and the Supplement, together with any ad-  
20 ditional amendments or supplements which may be adopted by the  
21 Court from time to time, are sometimes referred to herein as the  
22 "Plan." A goal of the Reorganization Plan and the Supplement is  
23 the cleanup of the real property owned by PSSC ("Property").

24 D. EPA is authorized to enter into this Consent Order pur-  
25 suant to the authority vested in the EPA Administrator by Section  
26 122(h)(1) of the Comprehensive Environmental Response, Compensa-  
27 tion, and Liability Act of 1980, as amended by the Superfund  
28

1 Amendments and the Reauthorization Act of 1986, ("CERCLA"), which  
2 authority has been delegated to the Regional Administrator of the  
3 EPA by EPA Delegation No. 14-14-D (Feb. 26, 1987) and redelegated  
4 to Region 9's Assistant Director for Superfund by Regional  
5 Delegation of Authority R1290.44 (October 26, 1988).

6 E. This Consent Order will be binding upon EPA, the Spe-  
7 cial Master, PSSC and its directors, officers, employees, agents,  
8 successors, and assignees. Each signatory to this Consent Order  
9 represents that he or she is fully authorized to enter into the  
10 terms and conditions of this Consent Order and to legally bind  
11 the party represented by him or her. The parties entering into  
12 this Consent Order agree to undertake all actions required by the  
13 Consent Order.

14 F. The Special Master and PSSC consent to and will not  
15 contest EPA's authority to enter into this Consent Order or to  
16 implement or enforce its terms.

17

18 II. Facts and Law

19 A. Hazardous substances, pollutants, and contaminants as  
20 defined in Sections 101(14) and 104(a)(1) of CERCLA, 42 U.S.C.  
21 §§9601(14) and 9604(a)(1), have been or are threatened to be  
22 released into the environment at the Site.

23 B. As a result of releases or threatened releases, EPA  
24 will undertake response actions at the Site pursuant to Section  
25 104(a) of CERCLA, 42 U.S.C. §9604(a).

26 C. EPA is entitled to seek recovery from responsible  
27 parties for response costs incurred at or in connection with  
28

1 releases of hazardous substances, including interest, pursuant to  
2 CERCLA Section 107(a), 42 U.S.C. §9607(a).

3 D. PSSC acknowledges that it is a responsible party pur-  
4 suant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), and is li-  
5 able for all response costs incurred at or in connection with the  
6 Site.

7 E. EPA has determined that entering into this Consent Or-  
8 der is in the public interest.

9

10 III. Agreement

11 A. In entering into this Consent Order, PSSC agrees to:

12 1. Pay EPA for work performed pursuant to this Con-  
13 sent Order as set out below in Paragraph "C".

14 2. Provide guard services on the Site seven (7) days  
15 per week from 9:00 a.m. until 9:00 p.m. during the term of per-  
16 formance of the Workplan, attached hereto as Exhibit A (the  
17 "Workplan").

18 B. In entering into this Consent Order, the EPA agrees:

19 1. That the scope of the work to be performed under  
20 this Consent Order is defined by the Workplan. EPA reserves the  
21 right to alter the Workplan if conditions warrant. EPA will give  
22 written notice of any such alteration to the Special Master on  
23 behalf of PSSC. PSSC reserves the right to object to pay for any  
24 such alteration and, in such event, the provisions of Paragraph C  
25 shall not apply to such alteration.

26 2. To provide guard services on the Site seven (7)  
27 days per week from 9:00 p.m. until 9:00 a.m. during the term of  
28

1 the performance of the Workplan by the EPA.

2 3. To treat all information relating to PSSC and the  
3 Property, as they relate to the work performed under this Consent  
4 Order, as confidential and proprietary information of PSSC to the  
5 extent such information is protected by existing law. EPA will  
6 provide a copy of this agreement to all subcontractors and ven-  
7 dors. In addition, EPA will provide to other parties making in-  
8 quiries regarding this Order and the work performed pursuant  
9 hereto, including, inter alia, the Workplan, the name of PSSC  
10 representative Mike Cobb at (415) 493-7266.

11 4. To provide access to all information obtained  
12 while on the Site to the Special Master except as provided by  
13 law.

14 C. PSSC's liability to the EPA shall be governed by the  
15 following provisions:

16 i) Pursuant to Section 107(a) of CERCLA, PSSC shall  
17 be liable to EPA for all costs of removal incurred under the  
18 Workplan which are not inconsistent with the National Contingency  
19 Plan.

20 ii) Any liability of PSSC to the EPA under Provision  
21 "i" shall be an "Administrative Claim" under the Plan. Subject  
22 to the priority given under the Plan to real property taxes con-  
23 stituting a lien on PSSC's real property, Administrative claims  
24 are entitled to the highest priority of any payments under the  
25 Plan. EPA shall be given the highest priority of any creditor or  
26 administrative claim with the exception of the Office of the Spe-  
27 cial Master and shall be paid prior to any other past, present or  
28

1 future administrative claim with the exception of the Office of  
2 the Special Master. PSSC shall pay EPA for all liability under  
3 Provision "i" prior to January 15, 1994, with the exception of  
4 interest which is governed by section "iii", below.

5           iii) PSSC shall be liable for interest on all costs in-  
6 curred by EPA under Provision "i". Interest will begin accruing  
7 upon occurrence of either: 1) EPA's completion of the work  
8 described in the Workplan or 2) upon the EPA's termination of  
9 work under Paragraph "D" below. In accordance with 26 U.S.C.  
10 §9507(d)(3)(c), the rate of interest shall be determined by the  
11 Secretary of the Treasury (as of the close of the calendar month  
12 preceding the first month in which interest begins to accrue) to  
13 be equal to the current average market yield on outstanding  
14 marketable obligations of the United States with remaining  
15 periods to maturity comparable to the anticipated period during  
16 which the advance will be outstanding. Interest shall be com-  
17 pounded annually. On or before January 15, 1996, PSSC shall pay  
18 EPA for all accrued interest. Interest will continue to accrue  
19 until PSSC has paid EPA for all liability, including interest,  
20 covered by this agreement.

21           iv) If EPA has not received payment in full for the  
22 liability fixed under Provision "i" by January 15, 1994, and/or  
23 payment in full for the interest described under Provision "iii"  
24 by January 15, 1996, EPA shall not be barred from securing this  
25 obligation through the use of a lien or other security interest  
26 in any assets of PSSC or any related entity or of the Plan.  
27 Nothing in this paragraph shall be construed to limit EPA's  
28

1 ability to obtain a lien or security interest for future  
2 liability PSSC may incur for any matters not expressly included  
3 in the Workplan.

4 v) PSSC and EPA agree that the statute of limitations  
5 for EPA to bring an action to recover the costs and interest  
6 covered by this Consent Order shall be tolled until January 15,  
7 1997, at which time it will expire. Accordingly, the statute of  
8 limitations provided by CERCLA Section 113(g)(2) will not be ap-  
9 plicable to this matter.

10 vi) Payment to the EPA shall be made by certified or  
11 cashier's check made payable to "EPA - Hazardous Substance Super-  
12 fund" and should specifically reference the Site. The check  
13 shall be sent to:

14 EPA Superfund  
15 P.O. Box 360863  
16 Pittsburgh, Pennsylvania 15251

17 PSSC shall simultaneously send a copy of its check to:

18  
19 Robert B. Ogilvie  
20 Environmental Protection Agency, Region 9  
21 Office of Regional Counsel  
22 75 Hawthorne  
23 San Francisco, CA 94105

24 D. If the Special Master determines that it is in the best  
25 interests of the Plan, and EPA determines that the work will be  
26 done properly and promptly and that it is in the best interests  
27 of public health, welfare and the environment, the Special Master  
28 may contract the services of a qualified contractor ("Qualified  
Contractor", subject to the approval of the EPA), to perform the



1 balance of the Workplan not yet completed. EPA reserves the  
2 right to remain on the property to oversee all work performed by  
3 the Qualified Contractor as well as to take over the work and  
4 complete the Workplan if EPA, in its sole discretion, determines  
5 that such action is necessary.

6 E. In addition to any other remedies or sanctions avail-  
7 able to EPA, if PSSC fails or refuses to comply with any term or  
8 condition of this Consent Order, it shall be subject to enforce-  
9 ment actions pursuant to CERCLA.

10 F. Nothing in this Consent Order is intended to be nor  
11 shall it be construed as a release or covenant not to sue for any  
12 claim or cause of action, administrative or judicial, civil or  
13 criminal, past or future, in law or in equity, which EPA may have  
14 against PSSC for:

15 a) any liability as a result of failure to make the  
16 payments in accordance with this Consent Order; or

17 b) any matters not expressly included in the  
18 Workplan, including, without limitation, any liability for  
19 damages to natural resources or future response costs incurred  
20 after the effective date of this Consent Order.

21 G. Nothing in this Consent Order is intended to be nor  
22 shall be construed as a release or covenant not to sue for any  
23 claim or cause of action, administrative or judicial, civil or  
24 criminal, past or future, in law or in equity, which EPA may have  
25 against any person, firm, corporation or other entity not a sig-  
26 natory to this Consent Order.

27 H. Nothing in this Consent Order is intended to be nor  
28

1 shall be construed as a release or covenant not to sue for any  
2 claim or cause of action, administrative or judicial, civil or  
3 criminal, past or future, in law or in equity, which the State of  
4 California has against PSSC.

5 I. PSSC agrees not to assert any claims or causes of ac-  
6 tion against the EPA or the Hazardous Substance Superfund arising  
7 out of response activities undertaken at the Site, or to seek any  
8 other costs, damages, or attorney's fees from the United States,  
9 its agencies, employees or contractors arising out of response  
10 activities undertaken at the Site. PSSC waives any right it  
11 might have to seek reimbursement from EPA pursuant to CERCLA §§  
12 106, 111, and 112, 42 U.S.C. §§ 9606, 9611, and 9612, pertaining  
13 to the Site.

14 J. This Consent Order shall be subject to a thirty-day  
15 public comment period as required by Section 122(i) of CERCLA.  
16 As also required by Section 122(i)(3) of CERCLA, EPA may withdraw  
17 its consent to this Order if comments received disclose facts or  
18 considerations which indicate that this Order is inappropriate,  
19 improper or inadequate. EPA shall issue PSSC written notice of  
20 the opening of the public comment period. This notice shall be  
21 postmarked within five days of the beginning of the comment  
22 period.

23 K. This Consent Order is subject to the approval of the  
24 Court. The Special Master shall apply to the Court for such ap-  
25 proval and shall also apply to the Court for permission to name  
26 the EPA as the highest priority administrative claim, as provided  
27 herein, with the exception of the Office of the Special Master,  
28

1 and to provide for EPA's right to receive payment from the dis-  
2 tributable assets of PSSC in accordance with the terms of this  
3 Consent Order. The parties agree that approval of this Consent  
4 Order by the Court constitutes approval of the classification of  
5 the liability of PSSC to the EPA as the highest priority under  
6 Part III, Section 2, paragraph A(b)ii of the Supplement to the  
7 Reorganization Plan of Pacific States Steel Corporation, dated  
8 October 28, 1988. The EPA shall, upon written request of the  
9 Special Master, use its best efforts to assist the Special Master  
10 in obtaining the Court's approval of this Consent Order.

11 IT IS SO AGREED.

12 Pacific States Steel Corporation

13  
14 By: Stephen J. Russell  
15 Stephen J. Russell, Special Master  
16 to the United States District Court

9/20/90  
Date

17 U.S. Environmental Protection Agency

18  
19 By: Daniel C. Webb  
20 Gerald M. Clifford  
21 Assistant Director for Superfund  
22 EPA Region IX

9/27/90  
Date

## EXHIBIT A

### WORKPLAN

The removal activities at the Pacific States Steel Corporation ("PSSC") site will be carried out in three phases. The first phase will be the characterization of the contents of all drums, transformers and other containers which have been identified by Rollins Environmental Services Inc., along with any other like containers or substances which are discovered during the removal process. The second phase will be the treatment, recycling and/or disposal of all identified hazardous wastes found on the PSSC site.<sup>1</sup> The third phase of the removal will be the creation and implementation of a plan to mitigate hazards posed by any residual contamination found to exist at the PSSC site.

To accomplish these three phases of the response, two EPA Contracts will be utilized: the Emergency Response Cleanup Services (ERCS) Contract and the Technical Assistance Team (TAT) Contract. Additionally, an Inter-Agency Agreement with the United States Coast Guard has been prepared to provide for logistical support and site safety monitoring.

### PHASE ONE

On-site work commenced on August 29, 1990. Initial activities include setting up the response trailers (1 Coast Guard Pacific Strike Team, 1 ERCS) and the decontamination trailer, as well as hooking up the phone and power lines. Since the nearest water source is too distant for a fire hose, a water truck will be used to transport water. The water truck will also be used for dust suppression on access roads. Other initial activities include debris clearance for the support zone and the spraying of a soil sealant on the obvious friable asbestos to mitigate this potential inhalation threat.<sup>2</sup> Once the support and decontamination zones are set up, empty drums will be segregated to allow easy access for sampling. All of these preparations are anticipated to take between two and three days.

-----  
1. This Workplan will not cover the removal of asbestos or the removal of the containers on top of the electrostatic precipitator.

2. Regular air sampling for asbestos will continue during the initial stages of this response and several obvious sources of friable asbestos will be sealed as a precautionary measure.

Two sampling teams of three members (tentatively 1 TAT, 1 Coast Guard Pacific Strike Team and 1 ERCS) will be utilized. In addition, the hazard categorization field analysis (hazcatte line) will employ three TAT members.<sup>3</sup> The majority of these Phase 1 activities should be completed during the first week of activity at the Site.

## PHASE TWO

Samples will be collected with one "clean" member recording container information which will later be used for waste profiling for off-site disposal. Every attempt will be made to match existing composited waste profiles gathered by Rollins Environmental Services, Inc., and Romic Chemical Corp. with specific numbered drums. The hazcatte line will run the standard hazcatte analyses to categorize the samples. This data, along with the container information, will be entered into TAT's Streamline program, a d-Base program used for sorting hazcatte and container data.

As the sampling and hazcatte efforts near completion, an ERCS chemist will begin disposal site investigations. All disposal options will be evaluated with the following criteria:

1. All disposal practices will be consistent with RCRA;
2. Treatment, recycling and reuse will be considered instead of landfilling;
3. A RCRA permitted or Interim Status Facility will be used and will be in compliance per inspection within the last six months; and
4. If use of a landfill is deemed the only option, the materials will be sent to a RCRA landfill with double liner leachate detection, collection and removal system in place or an Interim Status Facility that has adequate groundwater monitoring data and disposal practices that are in compliance with manifest and PCB disposal requirements.

Costs for this phase are dependent on the nature of the wastes, and the ease of transport and acceptance of the wastes.

-----  
3. An Industrial Hygienist approved site safety plan is required for any EPA managed removal action. This is in conformance with a Regional Directive and OSHA Rule 1910.210. Level B Personnel Protection Equipment (PPE) will be in effect for all sampling activities and Level C will be in effect for decontamination support and hazcatting. Perimeter air sampling for volatile organic compounds will be in effect during sampling activities.

Details on how the wastes will be transported, where they will be disposed of and the schedule under which these activities will be accomplished will be determined after a comprehensive summary of the wastes is prepared. If time permits, disposal options and recommendations for disposal will be re-evaluated as more information becomes available.

### PHASE THREE

This phase will involve a determination as to whether any residual contamination exists. The extent and type of residual contamination cannot be determined until Phase Two is near completion. At that time, biased soil samples will be taken and analyzed. If contamination is found, a plan to mitigate the hazards will be created and implemented.